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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 20 1999

REPLY TO THE ATTENTION OF

C-14J

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Consolidated Rail Corporation
c/o Mr. Rodney Griffith
Associate General Counsel
Consolidated Rail Corporation
2001 Market Street
P.O. Box 41416
Philadelphia, Pa. 19101-1416

RE: Tilton Plating Site, Tilton, Vermilion County, Illinois

Dear Mr. Griffith:

Enclosed is an Administrative Order issued by William E. Muno, Superfund Division Director of Region 5, U.S. Environmental Protection Agency ("U.S. EPA"). The Administrative Order requires Consolidated Rail Corporation ("Conrail") to grant U.S. EPA entry and access to the property described in the Order (*i.e.*, the Conrail railroad right-of-way adjacent to above-referenced site) for the purpose of sampling soil as a part of a removal action under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*

You must contact the U.S. EPA no later than three days after receipt of this letter and the enclosed Order indicating Conrail's intent to comply or not to comply with the terms of the Order. You may contact me at (312) 886-2248 to indicate Conrail's intent to comply or to request a conference to discuss the Order. Failure to notify U.S. EPA within three days after receipt of Conrail's intent regarding compliance with this Order or with any part of this Order may subject Conrail to a civil penalty in the amount of \$27,500 per day of noncompliance pursuant to Section 104(e)(5)(B) of CERCLA and 40 C.F.R. Part 19.

If you have any questions, please call me at (312) 886-6670.

Sincerely yours,

Ann Coyle by CF
Ann L. Coyle
Assistant Regional Counsel

encl.

cc: Cindy Nolan, On-Scene Coordinator (SE-5J)

IN THE MATTER OF:)
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CONSOLIDATED RAIL)
CORPORATION)
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Docket No. V-W-99-C-544

ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE
WITH REQUEST FOR
ACCESS

The United States Environmental Protection Agency (“U.S. EPA”) issues this Administrative Order (“Order”) to Consolidated Rail Corporation (“Conrail”), the present owner of a railroad right-of-way located adjacent to the Tilton Plating site (“facility”) in Tilton, Vermilion County, Illinois.

This Order requires Conrail to grant U.S. EPA and its officers, employees, representatives, and contractors entry and access to all portions of Conrail's railroad right-of-way located adjacent to the facility for the following purpose: sampling soil to determine whether

there has been, or may have been, a release of a hazardous substance, pollutant, or contaminant onto or from the Conrail railroad right-of-way.

U.S. EPA is notifying the State of Illinois of the issuance of this Order by sending a copy of the Order to the Illinois Environmental Protection Agency.

II. FINDINGS OF FACT

Based on information available on the date of issuance of this Administrative Order, the Regional Administrator of U.S. EPA, Region 5, makes the following findings of fact:

1. The Tilton Plating site is located at 305 Fairfield Street, Tilton, Vermilion County, Illinois and consists of a 40-foot by 40-foot building and surrounding land. The site is bordered by a residence to the south, residences to the north, an open field to the east, and the Conrail railroad right-of-way to the west. Immediately west of the building, the property drops 15-20 feet in elevation toward a water-filled ditch that runs parallel to the Conrail railroad. The Village of Tilton's athletic stadium is approximately 1/4 of a mile from the site and all traffic to the stadium, whether vehicular or pedestrian must pass the site.

2. The facility is a defunct plating facility. The years of operation of the Tilton Plating site are unknown. Site maps maintained by the Illinois Environmental Protection Agency (IEPA), dating from 1975, show buildings on the property, but it is unknown whether the site operated as a plating facility at that time.

3. During a 1998 inspection of the facility, U.S. EPA found that the building is in a severe state of deterioration. The building has a leaky roof and several holes in the walls. Both doors to the building are deteriorated. Approximately 25 drums and other containers of hazardous materials were stored unsecured outside of the building. Approximately 50 additional

drums, containers, and several open plating vats were inside the building (see Figure 3 of Action Memorandum). At the western base of the building there is an eroded hole, possibly caused by the hazardous materials located inside of the building. An erosion pathway from the hole and a lack of vegetation where the pathway extends down the ravine to the ditches that parallels the railroad right-of-way, indicate the possible migration of materials from the plating shop. Floor drains inside of the building have large eroded holes exposing possible contaminated soil under the building. The floor of the building was eroded and crumbling. An exhaust vent is at the top of the west wall of the building. The south exterior walls have significant green-blue staining and the west wall has yellow-brown staining.

4. IEPA was first notified of the site in 1992. On April 18, 1995, IEPA collected soil samples around the site and found high levels of barium around the entire site and east of the site across Fairfield Road on residential property. Hazardous levels of lead, cadmium, and chromium were found along the waste edge of the property.

5. On September 15, 1998, IEPA conducted another site investigation at the Tilton Plating site, which included: taking a site inventory of chemical containers, collecting soil samples, taking soil readings to determine metal content, and collecting drum and vat samples for pH testing.

6. On September 21, 1998, IEPA sent a letter to U.S. EPA requesting assistance at the Tilton Plating site.

7. On September 25, 1998, U.S. EPA conducted a site assessment of the facility and determined that an emergency stabilization was necessary at the facility.

8. On December 14, 1998, U.S. EPA issued an action memorandum for the facility, which describes a three-phase approach to addressing the facility. Phase I consisted of the emergency stabilization, which took place on September 25, 1998. Phase II includes: mobilization of personnel and equipment; container sampling; compatibility and bulk testing; waste consolidation; disposal bidding; disposal of all the hazardous materials; sampling of the building; and decontamination, demolition and disposal of the building if deemed necessary. Phase III, scheduled for Spring 1999, includes conducting a soil extent of contamination study, sampling soils at surrounding residences, excavating any soils above clean-up levels, and backfilling the area.

9. On March 31, 1999, Cindy Nolan, U.S. EPA Region 5's On-Scene Coordinator at the facility requested in writing that Conrail provide voluntary access to its railroad right-of-way adjacent to the Tilton property for the purpose of conducting soil sampling. On April 7, 1999, U.S. EPA received a written response from Conrail. Conrail did not return the voluntary access agreement. Conrail instead sent U.S. EPA a License Agreement, conditioning U.S. EPA's access to the property. On April 8, 1999, U.S. EPA again requested voluntary access to Conrail's railroad right-of-way. On April 13, 1999, U.S. EPA received a written response from Conrail. Conrail again refused to give U.S. EPA voluntary, unconditional access to Conrail's railroad right-of-way.

10. Access to Conrail's railroad right-of-way which is adjacent to the Tilton Plating site is necessary to complete the remedy set forth in the Action Memorandum and to otherwise respond to a release or threat of release of hazardous substances from the facility.

11. U.S. EPA has begun work on the time-critical removal action at the site, but Conrail's refusal to provide access is interfering with and delaying the work. Access to Conrail's railroad right-of-way has become critical for continuing the removal without incurring significant cost and delay.

III. DETERMINATIONS OF LAW

Based on information available on the date of issuance of this Administrative Order, the Regional Administrator of U.S. EPA Region 5, makes the following Determinations of Law:

1. The abandoned Conrail railroad right-of-way lies west of and adjacent to the Tilton Plating site, which is a "facility" as defined in Section 101(9) of CERCLA.

2. "Hazardous substances," as defined in section 101(14) of CERCLA, and related regulations at 40 C.F.R. § 302.4, have been deposited, stored, disposed of, placed, or otherwise located at the facility.

3. The presence of hazardous substances at the facility or the past, present, or potential migration of hazardous substances currently located at or emanating from the facility constitutes a reasonable basis to believe that there may be a "release" or substantial threat of "release," as defined in Section 101(22) of CERCLA, into the environment of a hazardous substance from or at the facility, and onto the properties adjacent to the facility.

4. Access to the Conrail's property adjacent to the facility is necessary to effectuate a response action, to determine the need for additional response action as defined section 101(25) of CERCLA, and to protect human health and welfare and the environment.

IV. ORDER

Based upon the foregoing Findings of Fact and Determinations of Law, it is hereby ordered that Conrail comply with U.S. EPA's request for access to Conrail's railroad right-of-way located west of and adjacent to the facility pursuant to Section 104(e) of CERCLA, in accordance with Paragraphs 1 through 5 below:

1. Conrail shall grant the U.S. EPA and its officers, employees, representatives, and contractors, including, but not limited to, U.S. EPA's authorized removal action contractors, access to the above-describe property for the following purpose: sampling soil to determine whether there has been, or may have been, a release of a hazardous substance, pollutant, or contaminant onto or from the Conrail railroad right-of-way.

2. Conrail shall provide access to its property for the length of time required to complete removal action activities and any additional work U.S. EPA determines to be necessary.

3. Conrail shall allow entry to its property for activities at all reasonable times, as required by Section 104(e)(3) of CERCLA.

4. This Administrative Order shall be binding on all employees, agents, successors and assigns of Conrail.

5. Any action taken by Conrail to deny access to U.S. EPA and its officers, employees, representative, and contractors, for the purpose of performing remedial action activities, or any attempt to interfere with the actions necessary to complete the removal action, shall be a violation of this Administrative Order.

V. CONFIDENTIAL BUSINESS INFORMATION

U.S. EPA advises Conrail that, consistent with 18 U.S.C. § 1905, it may assert a confidentiality claim with respect to any information obtained by U.S. EPA during the activities performed on Conrail's property under the authority of this Administrative Order. Information protected by 18 U.S.C. § 1905 includes information relating to or concerning trade secrets, processes, operations, style of work, apparatus, or confidential statistical data; or information concerning the identity, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation or association. U.S. EPA will handle any confidentiality claim in accordance with the Confidential Business Information regulations at 40 C.F.R. § 2.201 *et seq.*

VI. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Findings and Determinations is available for review by appointment on weekdays between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. Please contact Ann L. Coyle, Assistant Regional Counsel, at (312) 886-2248 to make an appointment to review the Administrative Record.

VII. EFFECTIVE DATE OF ORDER AND OPPORTUNITY TO CONFER

1. This Order shall become effective on the third day after Conrail receives it. U.S. EPA shall serve the Order on Conrail by certified mail, return receipt requested, or overnight delivery.

2. Conrail may request a conference with U.S. EPA to discuss this Order. The conference may be held by telephone. Conrail may appear by an attorney or other representative. Any conference shall take place within three days after Conrail's receipt of the Order. Conrail

should contact Ann L. Coyle, Assistant Regional Counsel, at (312) 886-2248 to arrange such a conference.

3. Any comments that Conrail may have regarding this Order, its applicability to Conrail, the correctness of any factual determination upon which the Order is based, or any other relevant and material issue must be in writing and submitted to U.S. EPA within 3 days of Conrail's receipt of this Order. Conrail must send any comments to Ann L. Coyle, Assistant Regional Counsel, U.S. EPA Region 5, 77 West Jackson Boulevard (C-14J), Chicago, Illinois 60604.

VIII. NOTICE OF INTENTION TO COMPLY

Conrail must notify U.S. EPA within three days of its receipt of the Order of its intent to comply fully or not to comply with the Order, regardless of whether Conrail requests a conference with U.S. EPA. Conrail must provide written notice to U.S. EPA stating whether it intends to comply with the terms of this order. Conrail must send this notice by overnight carrier, return receipt requested, to Ann L. Coyle, Assistant Regional Counsel, U.S. EPA Region 5, 77 West Jackson Boulevard (C-14J), Chicago, Illinois 60604. Failure to provide such timely notice will be deemed to be a refusal to grant access, constituting noncompliance with the terms of the Order.

IX. PENALTIES FOR NONCOMPLIANCE

Conrail is advised that, pursuant to Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), and 40 C.F.R. Part 19 a Court may assess a civil penalty not to exceed \$27,500 per day for each day that Conrail unreasonably fails to comply with this Order.

IT IS SO ORDERED this 19th day of April, 1999.

By: 

William Mung
Director, Superfund Division
United States Environmental
Protection Agency
Region 5

cc: M. Weber
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276

bcc: W. Bolen, SE-5J

~~RE: Sine file (W. Bolen, SE-5J, C. Nolan, SE-5J, A. Coyle, C-14J, C. Ropski, SE-5J)~~

C. Nolan, SE-5J

A. Coyle, C-14J

C. Ropski, SE-5J